THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.14896 of 2006

Dated:02.11.2006

Between
Visakhapatnam Municipal Corporation
Non Public Health Employees
Cooperative Thrift & Credit Society
Limited, represented by its President
V.V.Vamana Rao

.....Petitioner

and

1.The District Collector/Election
Authority, Visakhapatnam
And antoher.

...Respondents

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W.P.No.14896 of 2006

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 1st respondent *vide* proceedings in Rc.No.3845/ 2005 E (Coop) dated 17.7.2006 deciding to conduct election for the Managing Committee of the petitioner-Society as arbitrary and illegal and contrary to the orders of this Court passed in W.P.No.7500 of 2005.

It seems that the petitioner's society is a registered one and established in 1978. While so, the term of office of the petitioner's society came to an end, election was conducted on 30.4.2004 and new managing committee for the society was elected and the newly elected committee members were continuing in the office. That being so,

proceedings dated 28.3.2005 were issued by the 2nd respondent-Deputy Registrar of Cooperative Societies, Visakhapatnam, appointing person-in-charge for managing the affairs of the society. Aggrieved by the same, earlier, the society filed a writ petition before this Court being W.P.No.7500 of 2005 and the same was disposed on 20.06.2006, which reads as under:

> "Without deciding as to whether the election conducted on 30.4.2004 is valid and without issuing any notice to the elected body in this regard, the impugned proceedings have been passed without application of mind. Therefore, I am of the opinion that unless and until, the body elected on 30.4.2004 is declared to be invalid after conducting due enquiry into the matter, the appointment of person-in-charge is unwarranted.
>
> For the foregoing reasons, the writ petition is allowed and the order impugned is set aside. The respondents are directed to take appropriate action as per law after putting the petitioner society on notice and hearing if necessary, and thereafter pass appropriate orders as per law."

While allowing the above writ petition itself the fact as to validity or otherwise of the election

held on 30.4.2004 was also considered and it was observed by this Court that without deciding as to whether the election conducted on 30.4.2004 is valid or not, it was not open for the respondent to appoint a person in charge, apart from other aspects.

Thereafter, the impugned proceedings dated 17.07.2006 were issued by the Collector/District Election Authority, Visakhapatnam appointing one B.Sanyasi Naidu as Election Officer to conduct elections to the petitioner's society as per the schedule appended thereto.

Learned counsel for the petitioner strenuously contended that the impugned order could not have been passed by the Collector in view of the observations made by this Court in the earlier writ petition No.7500 of 2005 dated 20th June, 2006. In fact, in the above writ petiton, it was observed that without deciding the validity of the election purported to have been conducted on 30.04.2004, no further action could have been taken by any of

the authorities.

A detailed counter-affidavit has been filed by the respondents, denying the allegations made by the petitioner. Apart from this, some of the petitioners in W.P.No.17500 of 2005 got impleaded themselves as respondents 3 to 11 in the present writ petition.

Be that as it may, the fact remains that the validity of the elections purported to have been held on 30.4.2004, whereunder the managing committee of the society was elected, is not yet decided by any of the competent authority. Therefore, I am of the opinion that without deciding as to whether the election conducted on 30.4.2004 is valid or not, respondents ought not to have issued proceedings appointing an election officer for conducting elections afresh to the society. Further, no notice of any kind has been issued to the petitioner society in this regard. Under those circumstances, the impugned order is liable to be set aside and is accordingly set aside.

In the result, writ petition is allowed and the

impugned order is set aside, directing the 1st and 2nd respondents to conduct a detailed enquiry into the allegations with regard to election which was held on 30.4.2004 and decide as to whether the same was conducted as per procedure and whether the same was valid or not under law.

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2-11-2006

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